

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1232

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Wise

SUBJECT: Florida Faith-based and Community-based Advisory Council

DATE: March 7, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	<b>Fav/CS</b>
2.	Cibula	Maclure	JU	<b>Favorable</b>
3.			WM	
4.				
5.				
6.				

## I. Summary:

The bill codifies in statute the Florida Faith-based and Community-based Advisory Council. This entity was originally created in Executive Order 04-245, issued November 18, 2004, as amended by Executive Order 05-24, issued February 1, 2005. The 25-member council is assigned to the Executive Office of the Governor. The purpose of the council is to provide advice on the development of broadly based secular and faith-based engagement in the delivery of important state services and to report to the Governor and Legislature on these recommendations.

This bill creates section 14.31, Florida Statutes.

## II. Present Situation:

State government increasingly relies upon contract vendors for the delivery of public services. More than 40 percent of the current fiscal year state budget is comprised of special category appropriations. That category is used to distribute funds to public and private entities for direct service provision. The largest single expenditure item within special category appropriations is for Medicaid, the federal and state funded program of primary and secondary health care services for low-income, elderly, and disabled populations.

Recent state and federal actions have prompted a re-examination of the use of religious organizations for the delivery of public services. Public Law 104-193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," expanded the role of faith-based organizations in direct service delivery. States were authorized under s. 104 of the act to contract with charitable, religious, and private organizations for services, provided no funds were directed toward sectarian worship, instruction, or proselytizing. Article I, s. 3, State Constitution provides in part that "[n]o revenue of the state or any political subdivision or agency

thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” Concurrent actions in the state, with particular reference to the Department of Corrections and its faith-based programming at Lawtey Correctional Institution, have produced renewed interest in expanding the supply of contract vendors in the hopes of reaching underserved or un-served populations that otherwise qualify for public service or intervention.

On November 15, 2004, Governor Bush issued Executive Order 04-245 creating the Governor’s Faith-Based and Community Advisory Board<sup>1</sup> with a continuous existence through December 31, 2006. The advisory “board” complemented the statutory objectives of P.L. 104-193 by stating in its first section that its existence would “help state government coordinate efforts to utilize and expand opportunities for faith-based and community-based organizations to address social needs in Florida’s communities.” Executive Order 04-245 was amended by Executive Order 05-24, issued February 1, 2005, to extend the due date of the required written report to March 1, 2005.

**Organizational Structure of Executive Branch Agencies** - Chapter 20, F.S., provides for the organizational structure of legislatively created entities that are located in the executive branch. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government.<sup>2</sup> Section 20.02(1), F.S., states in part:

The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.<sup>3</sup> A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties that the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting

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<sup>1</sup> Chapter 20, F.S., provides for no entity in the executive branch called an “advisory board,” but instead authorizes entities of this type to be created as “advisory councils.” “Boards” have power to oversee and execute programs, whereas “councils” only provide policy recommendations.

<sup>2</sup> Article II, s. 3 of the State Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

<sup>3</sup> *Seaside Properties, Inc., v. State Road Department*, 190 So. 2d 391, 393 (Fla. 3d DCA 1966).

outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.<sup>4</sup>

Section 20.03, F.S., contains definitions of the entities that are created in the executive branch. Section 20.03(7), F.S., defines “council” or “advisory council” to mean:

an advisory body means an advisory body created by specific statutory enactment and appointed to function on a continuing basis *for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.*

Section 20.03(8), F.S., defines “committee” or “task force” to mean:

an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

Section 20.03(12), F.S., defines “board of trustees” to mean:

except with reference to the board created in chapter 253, . . . a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.

Section 20.052, F.S., establishes requirements for each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency. Under this section, such an entity:

- May be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- Must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose.
- Must keep the Legislature and the public informed of the numbers, purposes, memberships, activities, and expenses of the entity.
- Must not be created unless it meets a statutorily defined purpose.
- Must have powers and responsibilities that conform to the definition of governmental units established in ch. 20, F.S.
- Must, unless expressly provided otherwise by specific statutory enactment, have members serve 4-year staggered terms.
- Is served by members who receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

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<sup>4</sup> *Lee v. Division of Florida Land Sales and Condominiums*, 474 So. 2d 282, 284 (Fla. 5th DCA 1985).

Further, under s. 20.052, F.S., the following provisions apply:

- The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.
- The private citizen members of a commission or board of trustees that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.
- Unless an exemption is otherwise specifically provided by law, all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency are public meetings under s. 286.011, F.S. Minutes, including a record of all votes cast, must be maintained for all meetings.
- If an advisory body, commission, board of trustees, or other collegial body that is adjunct to an executive agency is abolished, its records must be appropriately stored, within 30 days after the effective date of its abolition, by the executive agency to which it was adjunct. The advisory body, commission, board of trustees, or other collegial body may not perform any activities after the effective date of its abolition.

### III. Effect of Proposed Changes:

**Section 1.** Section 14.31, F.S., is created to establish the Florida Faith-based and Community-based Advisory Council. Subsections (1) and (2) provide statements of legislative intent to recognize and foster the contributions of faith and community-based organizations in the provision of services to vulnerable citizens and debilitated neighborhoods.

Subsection (3) and (4) create a 25-member advisory council to be located in the executive Office of the Governor and configure its internal operations. The Governor appoints 17 of the members with the remaining eight equally appointed by the President of the Senate and the Speaker of the House of Representatives. The council is directed to meet at least once per quarter and may notice and hold its meetings electronically and through teleconferencing.

The duties of the council are to review and recommend in a report to the Governor and the Legislature:

- How faith-based and community-based organizations can best compete with other organizations for the delivery of state services, regardless of an organization's orientation, whether faith-based or secular.
- How best to develop and coordinate activities of faith-based and other community programs and initiatives, enhance such efforts in communities, and seek such resources, legislation, and regulatory relief as may be necessary to accomplish these objectives.
- How best to ensure that state policy decisions take into account the capacity of faith-based and other community initiatives to assist in the achievement of state priorities.
- How best to identify and promote best practices across state government relating to the delivery of services by faith-based and other community organizations.

- How best to coordinate public awareness of faith-based and other community organizations, such as demonstration pilot programs or projects, public-private partnerships, volunteerism, and special projects.
- How best to encourage private charitable giving to support faith-based and community initiatives.
- How best to bring concerns, ideas, and policy options to the Governor and Legislature for assisting, strengthening, and replicating successful faith-based and other community programs.
- How best to develop and implement strategic initiatives to strengthen the institutions of families and communities in this state.
- How best to showcase and herald innovative grassroots nonprofit organizations and civic initiatives.
- How best to eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community efforts to address social problems.
- How best to monitor implementation of state policy affecting faith-based and other community organizations.
- How best to ensure that the efforts of faith-based and other community organizations meet objective criteria for performance and accountability.

In providing the recommendations noted above, subsection (6) provides that the council is expressly prohibited from making any recommendation that is in conflict with the Establishment Clause of the First Amendment to the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution.

Subsection (7) requires the submission of an annual report of activities by February 1.

Subsection (8) repeals the enacting section and abolishes the council effective June 30, 2011, unless otherwise saved from repeal.

**Section 2.** The act takes effect July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Pursuant to the requirements of s. 24, Art. I of the State Constitution, all records of the council are public records and all meetings of the council must be noticed and open to the public. These requirements are also required by ch. 119, F.S., and s. 286.011, F.S.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill expressly prohibits the council from making any recommendation that is in conflict with the Establishment Clause of the First Amendment to the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Depending upon the recommendations of the council and legislative and executive implementation of such recommendations, faith-based and community-based organizations may be able to obtain governmental contracts for the provision of services or may benefit from the reduction of bureaucratic barriers to the provision of such services.

**C. Government Sector Impact:**

Depending upon the recommendations of the council and legislative and executive implementation of such recommendations, increased numbers of service providers may result in the opportunity for more effective and efficient delivery of services, assuming that appropriate accountability provisions are followed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Legislature has appropriated funds to religious organizations for many years in their capacity as contract vendors for the provision of community-based services. In many parts of Florida, the Salvation Army acts as a contract vendor for the delivery of misdemeanor probation supervision services, following discontinuance as a directly delivered state agency service. Many religious and secular organizations participate in the Florida State Employees' Charitable Campaign, named in s. 110.181, F.S., as the only statutorily recognized state employee charitable donation program.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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